

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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Date: DEC 05 2012

Office: CALIFORNIA SERVICE CENTER

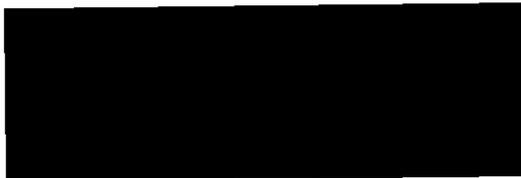
FILE:   


IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the California Service Center (the director) denied the nonimmigrant visa petition (Form I-129F), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiancé(e) of a United States citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition because the petitioner had failed to establish either that he and the beneficiary met in person within the two years immediately preceding the filing of the petition or that meeting the beneficiary in person would have been a hardship for him. On appeal, counsel provides a brief and a statement from the petitioner.

#### *Applicable Law*

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

subject to subsections (d) and (p) of section 214, an alien who -

(i) is the fiancée or fiancé of a citizen of the United States . . . and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission[.]

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), states in pertinent part that a fiancé(e) petition:

shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

#### *Facts and Procedural History*

The petitioner filed the fiancé(e) petition with U.S. Citizenship and Immigration Services (USCIS) on August 8, 2011. Therefore, the petitioner and beneficiary were required to have met between August 8, 2009 and August 8, 2011. In denying the petition, the director noted that the petitioner admitted that he had not personally met the beneficiary within the two-year period preceding the filing of the petition. The director stated that the record contained a letter from Nurse Practitioner [REDACTED] indicating that the petitioner's health issues prevented him from travelling long distances. The director stated, however, that the petitioner did not present any evidence to show that he could not meet the beneficiary in a country bordering the United States.

When filing the appeal, counsel contended that the petitioner is eligible for an extreme hardship waiver of the two-year personal meeting requirement, and that USCIS violated policy when it failed to provide the petitioner with an opportunity to provide additional evidence. The petitioner also provided a statement in which he asserted that he is a veteran who suffers from anxiety and agoraphobia and is, therefore, unable to personally meet his fiancée, as he is unable to travel long distances.

On August 20, 2012, the AAO issued a Request for Evidence (RFE) because the record lacked a Form G-325A, Biographic Information, signed by the petitioner, as the one he had submitted was neither signed nor dated. The petitioner responded with the requested for G-325A, a second brief from counsel, a letter written on Department of Veterans Affairs (VA) letterhead, and a series of progress notes from the VA in Lincoln, Nebraska.

#### *Analysis*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). *De novo* review of the relevant evidence fails to demonstrate that the petitioner merits a waiver of the in-person meeting requirement and the petition will remain denied.

The petitioner claims that he suffers from severe anxiety with agoraphobia and depression, which prevents him from being able to travel any distance by any means of conveyance. The petitioner submitted a letter, dated December 17, 2010, that was signed by three individuals from the VA in Des Moines, IA,<sup>1</sup> who stated that the petitioner has been diagnosed with depression and anxiety since 2000, and that travel would be an extreme hardship for him. This letter is deficient, however, because none

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<sup>1</sup> It appears from the signatures on the letter that one individual is a nurse, one has a doctorate in medicine, and one has a doctorate in osteopathy.

of the individuals who signed it identifies himself or herself as the individual who diagnosed the petitioner, which diminishes the probative value of their discussion of the petitioner's medical conditions and his prognosis. Additionally, while the petitioner himself stated that he suffered from agoraphobia, none of the individuals listed that condition as something from which the petitioner suffers. Stating generally that the petitioner suffers from depression and anxiety, which prevents him from traveling, is not enough to meet the burden of proof in these proceedings.

Similarly, the copy of a letter, dated September 4, 2012, from an individual whose name is unclear, but who signs as a medical doctor from the VA Nebraska-Western Iowa Health Care System, is also deficient. This individual states that the petitioner has "medical difficulties" which make it impossible for him to travel; however, the individual neither identifies these medical conditions nor explains his relationship to the petitioner and his expertise in making such diagnoses and prognoses. Moreover, this is a photocopy of a letter, with the identity of the alleged writer unknown. Like the first medical letter, this one also is not probative evidence that the petitioner should be exempted from meeting the beneficiary in person for medical reasons.

The progress notes contained in the record are evidence of the petitioner's self-reporting of symptoms to the VA in Lincoln, Nebraska, and not probative evidence that the petitioner has been diagnosed with a medical condition that would exempt him from the in-person meeting requirement. The record contains no detailed diagnosis of the petitioner's medical condition(s) by a licensed mental health professional, explaining the petitioner's diagnoses, treatments and prognoses. Without such evidence, the petitioner has failed to establish that he merits a favorable exercise of the Secretary's discretion to waive the meeting requirement at section 214(d)(1) of the Act.

Beyond the director's decision, we note the petitioner's failure to indicate at Part A.11 of the Form I-129F that he had previously filed a fiancée petition in 2002 on behalf of his second wife, N-W,<sup>2</sup> which was approved in 2003. Although it is unclear whether his omission was deliberate or an oversight, the petitioner should note the penalties listed on the Form I-129F for knowingly and willfully falsifying or concealing a material fact when submitting a benefit request to USCIS.

### *Conclusion*

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.

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<sup>2</sup> Name withheld to protect individual's identity.